



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153136

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 21, 2013, at West Bend, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of FS benefits for the period of November 1, 2011 – June 30, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Washington County.

2. On July 19, 2012, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner informing her that the agency determined that an overpayment of \$2,612 exists for the period of November 1, 2011 – May 30, 2012. The Notification also informed the Petitioner of the right to file an appeal of the agency's determination by filing such appeal with the Division of Hearings and Appeals within 90 days of the date of the action. The Notification of FS Overissuance was also sent to the Petitioner's roommate as a liable party.
3. On September 8, 2012, the Petitioner's roommate filed an appeal of the overpayment with the Division of Hearings and Appeals. The appeal was designated as DHA Case No. FOP143707. The decision upheld the agency's determination of an overpayment for the Petitioner's roommate.
4. On April 8, 2013, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner informing her that the agency determined that an overpayment of \$1,410 existed for the period of July 1, 2012 – December 31, 2012. The Petitioner filed an appeal of this action. This appeal was designated as DHA Case No. FOP148682. DHA determined in that appeal that the overpayment should be reduced based on its conclusion that the Petitioner was entitled to \$200/month in FS benefits which the agency had not considered in determining the amount of the overpayment.
5. On October 23, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g).

In this case, the Petitioner's Power of Attorney appeared on her behalf. He indicated that he is appealing the agency determination made on July 19, 2012 that Petitioner owes an overpayment of \$2,612 for the period of November 1, 2011 – May 30, 2012. He testified that he is not appealing the overpayment itself but rather appeals the amount of the overpayment. He argues that, based on the decision in FOP148682, the agency should reduce the amount of the overpayment for the period of November 1, 2011 – May 30, 2012 by the amount of FS to which the Petitioner was entitled during that period.

The Petitioner's POA testified at the hearing that the Petitioner did not appeal the overpayment action earlier due to her inability to file an appeal while caring for family members.

The Petitioner's appeal in this matter was filed more than 1 year, 3 months after the date of the action. It is, therefore, untimely, and I have no jurisdiction to rule on the merits of the case. As dicta, I note that nothing prevents the agency from deciding to review the overpayment from November, 2011 – June, 2012 to determine if it should be reduced based on the reasoning in the decision in FOP148682.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of December, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 17, 2013.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability